

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs July 19, 2000

**STATE OF TENNESSEE v. ZANE ALLEN DAVIS, JR.**

**Direct Appeal from the Circuit Court for Williamson County  
No. 11-108-598 Timothy L. Easter, Judge**

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**No. M2000-00737-CCA-R3-CD - Filed December 28, 2000**

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Defendant Zane Allen Davis was found guilty by a Williamson County jury of violating Tenn. Code Ann. §55-10-401(a)(2), driving a vehicle while the alcohol concentration in the driver's blood or breath was ten-hundredths of one percent (0.10%) or more, a Class A misdemeanor. The trial court sentenced Defendant to eleven months and twenty-nine days, with the sentence suspended after Defendant served thirty days in the County Jail, and a \$1250 fine. Defendant raises the following issues in his appeal: (1) whether the trial court erred when it ruled that the State was not required under Tenn. R. Crim. P. 16 to provide Defendant with documentation pertaining to the reliability of his blood alcohol test results; (2) whether the trial court erred when it quashed Defendant's subpoena duces tecum requesting the State's expert to bring documentation, previously ruled undiscoverable under Tenn. R. Crim. P. 16, to trial; (3) whether the trial court erred by allowing the State's expert witness to testify without first laying the proper foundation; and (4) whether the trial court erred when it limited Defendant's proof at trial regarding the arresting officer's motive. After a review of the record, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed.**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID G. HAYES, J., and NORMA MCGEE OGLE, J., joined.

Lee Ofman, Franklin, Tennessee, for the appellant, Zane Allen Davis, Jr.

Paul G. Summers, Attorney General and Reporter; Marvin S. Blair, Jr., Assistant Attorney General; Ronald L. Davis, District Attorney General; Lee E. Dryer, Assistant District Attorney.

## OPINION

On May 11, 1998, the Williamson County Grand Jury indicted Defendant Zane Allen Davis for driving under the influence (“DUI”) of an intoxicant, driving while the alcohol concentration in Defendant’s blood or breath was ten-hundredths of one percent (0.10%) or more, driving on a revoked license, second-offense DUI, and second-offense unlawfully driving on a revoked license as a result of prior offense. On November 18, 1999, a Williamson County jury found Defendant guilty of driving with blood alcohol of ten-hundredths of one percent or more, a Class A misdemeanor, and not guilty of driving on a revoked license; the remaining charges were dismissed.

In his motion for a new trial, Defendant claimed that the State suppressed evidence material to the preparation of his defense. Specifically, this evidence consisted of data concerning the reliability of the instrument used to acquire the blood alcohol test results used in evidence against Defendant at trial. This information was requested in a discovery motion and through subpoena duces tecum which were denied and quashed, respectively. After a sentencing hearing, the trial court sentenced Defendant to eleven months and twenty-nine days, with the sentence to be suspended after Defendant serves thirty days in the County Jail. In addition, the trial court revoked Defendant’s license for a period of one year (with application for restricted license available) and required that Defendant attend Alcohol Safety School. Defendant raises the following issues in his appeal: (1) whether the trial court erred when it ruled that the State was not required under Tenn. R. Crim. P. 16 to provide Defendant with documentation pertaining to the reliability of his blood alcohol test; (2) whether the trial court erred when it quashed Defendant’s subpoena duces tecum requesting the State’s expert to bring documentation previously ruled undiscoverable under Rule 16 to trial; (3) whether the trial court erred by allowing the State’s expert witness to testify without first laying the proper foundation; and (4) whether the trial court erred when it limited Defendant’s proof regarding the arresting officer’s motive. After a review of the record, we affirm the judgment of the trial court.

## I. FACTS

Adrian Breedlove, an officer with the Brentwood Police Department, testified at trial that he was on duty the evening of February 17, 1998, when he observed two trucks traveling in excess of the posted speed limit. Using radar, Breedlove clocked the speed of the vehicles at fifty-two miles per hour, twenty-two miles per hour over the posted maximum speed. Breedlove testified that he pursued the vehicles, using his lights and siren, but the drivers of both trucks ignored him. Ultimately, Breedlove caught up with them when they stopped in the parking lot of O’Charley’s restaurant.

Officer Breedlove testified that the drivers of the trucks were identified as Zane Allen Davis, the Defendant, and a friend of Defendant’s named Thorpe Weber. When Breedlove first confronted the two men, both drivers “smelled like alcohol.” Consequently, Breedlove questioned them both and administered standard field sobriety tests (“FST”) to determine whether they were fit to drive. Weber passed the sobriety tests and was released with a citation for speeding. Defendant, on the other hand, failed both tests given him: the one-leg-stand and the walk-and-turn test. Breedlove further testified that Defendant also had bloodshot, watery eyes and that his speech was slurred.

Moreover, Defendant was unsteady on his feet and admitted that he had been drinking earlier. For the foregoing reasons, Breedlove arrested Defendant and explained the Implied Consent Law to him. When Defendant agreed to submit to a blood alcohol test, Breedlove accompanied him to the Williamson Medical Center for testing. Breedlove received the blood sample from the hospital technician, sealed and initialed the tube, then placed it into a tamper-proof Tennessee Bureau of Investigation evidence box for storage at the police department until it could be taken to the crime laboratory for analysis.

In addition to his duties as a police officer, Officer Breedlove testified that he is a certified DUI Instructor. As such, Breedlove is qualified to train other officers in methods of detecting and apprehending intoxicated drivers. Breedlove explained that the standardized FSTs given Tennessee drivers are recognized and administered nationally. To fail a test, the driver must exhibit two or more “clues” indicating intoxication while he being tested. For instance, eight “clues” exist for the walk-and-turn test. These include losing one’s balance, starting too early, raising one’s arms, stopping without reason, and not following the officer’s directions. The National Highway Transportation & Safety Administration has determined that a suspect who evinces two or more clues for either FST can be considered too intoxicated to lawfully drive. Breedlove testified that Defendant exhibited more than two “clues” for both tests: during the one-leg stand test Defendant swayed and repeatedly dropped his foot; during the walk-and-turn test, Defendant turned improperly, raised his arms, and then finally gave up, stating that he was unable to complete the exercise. As a result of Defendant’s performance on the FSTs and Breedlove’s experience, he concluded that Defendant was too intoxicated to drive.

John Harrison, a forensic toxicologist working in the Tennessee Bureau of Investigation crime laboratory, testified that he analyzed Defendant’s blood. Harrison testified that he has worked as a toxicologist with the TBI for twelve years and that he has analyzed in excess of 40,000 samples in that time period. Harrison earned a B.S. degree in medical technology and also worked in a hospital laboratory for twelve years prior to his job with the TBI. The TBI crime laboratory which tested Defendant’s sample received national accreditation from the American Society of Crime Lab Directors in 1994. Harrison testified that the lab must be periodically scrutinized by forensic specialists across the nation concerning numerous aspects of its work including procedures, security, personnel qualifications, and quality control in order for the lab to maintain its accreditation status. In addition, the lab is required to use standards to periodically check proficiency. Instruments are calibrated and equipment is checked on a daily basis.

Harrison testified at length regarding his analysis of Defendant’s blood--the various steps he took and the theories underlying many of the lab’s testing procedures. Harrison described how proficiency standards are run and gave a cursory explanation of gas chromatography, which is the scientific method used by the TBI for separating mixtures during blood testing procedures. Harrison testified that, prior to all tests, he notes the condition of the sample when received and runs a series of standards through the instrument to insure proper functioning and accuracy of the instrument. Harrison said that standards are typically run after every ten samples and also upon completion of an analysis. Regarding Defendant’s blood sample, Harrison testified that it was received in good condition and that the standards which were run before and after Defendant’s blood analysis showed

that the instrument was operating properly. Harrison further testified as to the crime lab's chain of custody procedures: upon receipt of a sample (usually via U.S. Postal Service), responsibility for its care belongs to the evidence technician who assigns the sample a number and gives it to Harrison. Harrison testified that he then analyzed Defendant's blood sample and prepared a report of the test results: Defendant's blood contained 0.23 gram percent ethyl alcohol.

Regarding the numerous requests for documents which Harrison received from Defendant's counsel, Harrison testified that he did not have the time to give Defendant's case the "special attention" that counsel wanted from him. Harrison explained that since he frequently works on thousands of cases at a time, he was waiting for Defendant's counsel to "go through channels" and obtain a court order for the records he wanted. Harrison testified that if and when he received a court order, he would then comply with counsel's requests. Otherwise, he claimed that he could not accommodate him because counsel's requests were too numerous. Harrison testified that the Defendant received copies of the instrument calibration record for the actual day of testing, but he also wanted information for the six-month period of time starting three months prior to the date of Defendant's test and extending three months afterward. Harrison admitted that there was no way for Defendant to "check Harrison's work" without the documents he requested. Harrison also testified that it is TBI laboratory policy to keep samples for sixty days after testing so that defendants may request samples for independent analysis. Harrison said that he received no such request from Defendant.

## **II. FAILURE TO PROVIDE DISCOVERY MATERIALS**

Defendant first contends that the trial court erred when it did not compel the State to comply with Defendant's discovery request and provide him with numerous documents concerning Defendant's blood alcohol test. Defendant argues that Tenn. R. Crim. P. 16 requires disclosure of this type of information and that the State's failure to comply constitutes a discovery violation.

In a letter to the State, Defendant requested the following information which he believed was in the possession of the TBI crime laboratory: chain of custody documents; raw data from blood testing, including handwritten notes; line graphs and tabulated data printed by testing equipment; sample runs and associated calibration runs of testing equipment; TBI standing operating procedure for blood alcohol samples, and methods approved by TBI for such testing; the techniques and methods promulgated by the TBI to ascertain the qualifications and competence of the individuals to conduct analysis, to operate and to maintain blood alcohol testing instruments; and any other document generated as a result of the testing of Defendant's blood sample. Defendant already possessed the TBI crime lab test results indicating that Defendant's blood alcohol level was 0.23%.

When the State replied that the defense was not entitled to additional information under Tenn. R. Crim. P. 16, Defendant filed a motion to compel. After hearing argument and reviewing briefs from both sides on the matter, the trial court denied Defendant's motion on the ground that the information requested was not discoverable pursuant to Rule 16 and held that the reports and results which had already been given Defendant were all he was entitled to receive.

With some limitations, Tennessee Rule of Criminal Procedure 16 requires the State to disclose certain evidence to a defendant prior to trial. Section 16(a)(1)(C) provides:

Upon request of the defendant, the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, and which are material to the preparation of the Defendant's defense or are intended for use by the state as evidence in chief at the trial, or were obtained from or belong to the defendant.

Tenn. R. Crim. P. 16(a)(1)(C). Furthermore, section 16(a)(1)(D) states the following:

Upon request of a defendant the state shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the state ... and which are material to the preparation of the defense or are intended for use by the state as evidence in chief at the trial.

Tenn. R. Crim. P. 16(a)(1)(D).

Before we address Defendant's discovery issue, we note that blood alcohol tests such as that performed on Defendant are routinely used in Tennessee to determine whether a person was intoxicated at a certain time. See Neil P. Cohen, Tennessee Law of Evidence § 401.25 (1995). And, Tennessee state law provides for admissibility of such tests in cases involving driving under the influence of an intoxicant. Tenn. Code Ann. § 55-10-407(a) (1997). However, such tests are admissible only when it can be proven that the sample was taken by a properly trained person and that a proper chain of custody was established for the period of time between when the blood was drawn and the time it was analyzed. See Tenn. Code Ann. § 55-10-410 (1997). Furthermore, the Tennessee Supreme Court has held that it must be shown the testing device is scientifically acceptable and accurate for the purpose that it is being employed. State v. Johnson, 717 S.W.2d 298, 303 (Tenn. Crim. App. 1986) (citing Crawley v. State, 413 S.W.2d 370, 373 (Tenn. 1967)); Pruitt v. State, 393 S.W.2d 747, 751 (Tenn. 1965) (overruled on other grounds). Indeed, the purpose of the testing is "to provide *objective* scientific data to eliminate guesswork and speculation and to supplement the fallible observations of humans." State v. Sensing, 843 S.W.2d 412, 417 (Tenn. 1992) (citing Peterson v. State, 261 N.W.2d 405, 409 (S.D. 1977) (emphasis added)). It is this quality, objectiveness, which makes scientific evidence highly consequential--science cannot be readily impugned, and it can be similarly fruitless to argue against results acquired from a machine. In the interests of justice, a court must do everything reasonably within its power to ensure that scientific evidence is accurate so as not to mislead the finders of fact. When discovered, inaccuracies in particular test results go only to the weight of the evidence, not its admissibility, with the weight to be given the evidence a question of fact for the trier of fact in each case. State v. Johnson, 717 S.W.2d 298, 305 (Tenn. Crim. App. 1986).

The State argues that the trial court did not err in ruling that the State was not obligated under Tenn. R. Crim. P. 16 to provide Defendant with the documents he requested. The State further points out that Defendant did not offer any proof to establish that the requested information was material to the preparation of his defense; defendant merely claimed that he was entitled to the requested information and that it was material.

The State's argument further relies, in part, on the Tennessee Supreme Court's ruling in State v. Irick, 762 S.W.2d 121 (Tenn. 1988). The defendant in Irick wanted copies of the expert's "rough results" pertaining to individual characteristics of hair samples analyzed as part of a scientific test admitted into evidence against him at trial. The trial court denied the defendant's request, holding that the reports and results already submitted to the defendant were all he was entitled to have. Id. at 126. Our supreme court affirmed the ruling of the trial court, stating that there was "no violation of [Rule 16] and the defendant received all to which he was entitled in the way of discovery." Id.

We agree with Defendant that accuracy is important when determining admissibility of any scientific test results and, therefore, it is logical to consider information concerning the accuracy of the test instruments as important for defense purposes. See State v. Sensing, 843 S.W.2d 412, 416 (Tenn. 1992) (Court declared that the "defense is [ ] free to rebut the State's evidence by calling witnesses to challenge the accuracy of the particular machine..." and "[e]xpert testimony and the records of such procedures [regarding the manner in which the instrument performs its function] are available for examination."); State v. Davis, 823 S.W.2d 217, 219 (Tenn. Crim. App. 1991) (evidence of experiments and examinations of the intoxilyzer which revealed substantial malfunctions was material to issue of guilt). Moreover, we observe that the State's expert candidly admitted on cross-examination that there was no way for the accuracy of his work to be checked without access to the documents Defendant requested. Nevertheless, this one concession by the State's expert does not rise to the level of proof necessary to show that the requested documentation was discoverable.

After careful consideration, this Court is drawn to the logic of the State's argument. This is primarily because Defendant failed to make an offer of proof regarding the materiality of the documents requested. After a thorough examination of the video tape record, we conclude that Defendant's counsel has not provided us with any information which gives us a basis to rule in his favor. Not only is the record of the hearing on Defendant's motion to compel and Defendant's brief devoid of any proof establishing that the requested information was material, the trial record is deficient in this regard as well. Namely, we do not have before us any proof concerning what Defendant's expert would specifically require in the way of pertinent facts nor what he would do with them if he had them. We similarly lack proof of what particular documents the TBI has in its possession that would be helpful and how the documents would assist Defendant's case. Neither has Defendant offered any proof such as incompetency concerning the TBI's lab personnel or historical proof of inaccuracies or unreliable results with respect to the lab's instruments or equipment. We further observe that counsel could have asked that the trial court perform an in camera examination of the requested documents. In sum, since the State did not present the information in issue as evidence during trial and Defendant did not offer any proof as described above, we find no evidence that the requested documents were material. Defendant is not entitled to relief on this issue.

### III. MOTION TO QUASH

Defendant also contends that the trial court erred when it quashed Defendant's subpoena duces tecum which requested the State's expert to bring the documentation previously ruled non-discoverable under Tenn. R. Crim. P. 16 to trial. We disagree.

After the State denied Defendant's request for additional discovery information pursuant to Tenn. R. Crim. P. 16, Defendant filed a motion to compel on November 6, 1998. When the court denied this motion on December 28, 1998, Defendant thereafter requested five subpoenas duces tecum for service upon the State's expert witness, requiring him to bring the documents previously ruled non-discoverable under Rule 16 with him when he testified at trial. The State filed a motion to quash on November 15, 1999, which was granted in a jury-out hearing held during the trial which began on November 16, 1999.

The State argues that Defendant should not be allowed to use Rule 17 to skirt the court's denial of discovery under Rule 16. In so arguing, the State relies on State v. Quinton Cage, No. 01C01-9605-CC-00179, 1999 WL 30595, Montgomery County (Tenn. Crim. App., Nashville, Jan. 26, 1999), perm. to appeal denied (Tenn. 1999). In Cage, the defendant filed a motion for discovery pursuant to Rule 16 requesting that the State provide the materials used by the State's DNA expert to arrive at his test conclusions. This motion and a subsequent motion to compel were both denied on the ground that the materials requested were non-discoverable "work product." Thereafter, the defendant caused to be issued a subpoena duces tecum, directing the State's expert to appear at trial with the exact same materials previously ruled non-discoverable. The trial court granted the State's motion to quash the subpoena duces tecum, declaring that the defendant "could not circumvent the discovery protections of Rule 16 by issuing a subpoena for the same materials under Rule 17." Id. at \*8. This Court affirmed the trial court's judgment on appeal, remarking that "the limits of Rule 16(a)(2) would be meaningless if a defendant could simply subpoena the protected materials under Rule 17(c)." Id. at \*9.

Following a review of the record and the parties' briefs, we agree with the State that the trial court correctly granted the State's motion to quash Defendant's subpoenas duces tecum, but for different reasons. We do not agree with the State's contention that materials previously ruled non-discoverable under Rule 16 are never subject to a subpoena duces tecum for trial. This Court's holding in Cage, upon which the State heavily relies for that assertion, is distinguishable from the present case on the facts. Some information non-discoverable under Rule 16 may be legitimately acquired by subpoena duces tecum. For example, material not "within the possession, custody or control of the state" is non-discoverable under Rule 16. This, *in itself*, does not prevent a defendant from acquiring the material by subpoena duces tecum if the circumstances otherwise permit.

Rule 17(c) of the Tennessee Rules of Criminal Procedure provides as follows:

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command a person to whom it is directed to produce the books, papers, documents, or tangible things designated

therein. The court, upon motion made promptly and in any event by the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may condition denial of the motion upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things. The court may direct that books, papers, documents or tangible things designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit them to be inspected by the parties and their attorneys.

As can be seen, the trial court is permitted to quash or modify a subpoena duces tecum if compliance would be unreasonable or oppressive. The appellate record indicates that the State argued in the trial court that compliance would be unduly burdensome, i.e., “unreasonable and oppressive,” in conjunction with arguing that the documents were not discoverable and therefore not subject to being subpoenaed for trial. Defendant did not offer any proof that compliance with the subpoena was not “unreasonable or oppressive.” Neither did he offer to advance the costs of producing the documents (he was not indigent). In other words, the record is inadequate to permit this Court to hold that the trial court erred by granting the motion to quash. Even if we held that it was error to quash the subpoena, there is nothing in the record to indicate that the trial court’s decision was anything more than harmless error.

As in the situation involving Defendant’s motion to compel discovery under Rule 16, Defendant failed to offer any proof, in an “offer of proof” or otherwise, which would allow this court to grant him the relief he seeks on appeal. Therefore, Defendant is not entitled to relief.

#### IV. ADMISSIBILITY OF EXPERT TESTIMONY

Next, Defendant contends that the trial court erred when it permitted the State’s expert to testify. Specifically, Defendant argues that the State offered expert opinion evidence without laying a proper foundation as required under Tennessee Rules of Evidence 702 and 703. We disagree.

Generally, the admissibility of evidence is governed by standards of relevancy and reliability. State v. Begley, 956 S.W.2d 471, 475 (Tenn.1997); Tenn. R. Evid. 402. Our supreme court set the standards governing admissibility of expert scientific proof in Tennessee in McDaniel v. CSX Transp. Inc., 955 S.W.2d 257 (Tenn.1997):

In Tennessee, under the recent rules, a trial court must determine whether the evidence will substantially assist the trier of fact to determine a fact in issue and whether the facts and data underlying the evidence indicate a lack of trustworthiness. The rules together necessarily require a determination as to the scientific validity or reliability of the evidence. Simply put, unless the scientific evidence is valid, it will not substantially assist the trier of fact, nor will its underlying facts and data appear



to be trustworthy, but there is no requirement in the rule that it be generally accepted.

. . . [T]he non-exclusive list of factors to determine reliability are useful in applying our Rules 702 and 703. A Tennessee trial court may consider in determining reliability: (1) whether scientific evidence has been tested and the methodology with which it has been tested; (2) whether the evidence has been subjected to peer review or publication; (3) whether a potential rate of error is known; (4) whether, as formerly required by Frye, the evidence is generally accepted in the scientific community; and (5) whether the expert's research in the field has been conducted independent of litigation.

Although the trial court must analyze the science and not merely the qualifications, demeanor or conclusions of experts, the court need not weigh or choose between two legitimate but conflicting scientific views. The court instead must assure itself that the opinions are based on relevant scientific methods, processes, and data, and not upon an expert's mere speculation.

McDaniel, 955 S.W.2d at 265.

The admissibility of expert and scientific evidence in particular is also governed by Rules 702 and 703 of the Tennessee Rules of Evidence noted above. The former provides:

If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.

Tenn. R. Evid. 702. And, Tenn. R. Evid. 703 states:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness.

Tenn. R. Evid. 703.

The decision to admit scientific evidence is within the discretion of the trial court and will not be disturbed absent an abuse of discretion. State v. Begley, 956 S.W.2d 471, 475 (Tenn.1997). The trial court rules on questions regarding the admissibility, qualifications, relevancy and competency of expert testimony. McDaniel, 955 S.W.2d at 263.

In Tennessee, therefore, a trial court must first determine (1) whether the evidence will substantially assist the trier of fact to determine a fact in issue and (2) whether the facts and data underlying the evidence indicate a lack of trustworthiness. Id. at 265. After a review of the record, we conclude that the expert's testimony regarding Defendant's blood alcohol content was relevant and substantially assisted the jury as required under McDaniel. The relevance of the driver's blood alcohol in a DUI case is plain—it is an element of the offense. Consequently, reliable information regarding Defendant's blood alcohol content is helpful to a jury.

Additionally, we find no facts or data which would indicate a lack of trustworthiness respecting the State's expert witness. The trial court determined that the State's witness was "qualified as an expert by knowledge, skill, experience, training, or education" in accordance with Rule 702 and, after a review of the record, we agree. Harrison appeared to be knowledgeable and experienced in his field of work: he has worked as a TBI toxicologist for twelve years and analyzed in excess of 40,000 blood samples. Furthermore, Harrison testified at length regarding his analysis of Defendant's blood, the steps he took and the theories underlying many of the testing procedures. In order for the TBI crime lab to maintain its accreditation, Harrison's test results are continually monitored and checked by independent agencies. In short, we concur with the trial court's view that Harrison's education and training, which includes a B.S. degree in medical technology and work in a hospital laboratory for twelve years prior to his extensive experience with the TBI, are sufficient to qualify him as an expert.

Again, we note that blood alcohol tests are routinely used in Tennessee to determine whether a person was driving while intoxicated. These types of standardized tests have long been recognized by experts in the field as scientifically valid and reliable; thus, they fulfill the requirements outlined in McDaniel and meet the trustworthiness standard in Rule 703. The fact that the TBI's crime lab is accredited satisfies two "reliability" factors under McDaniel: (1) the scientific evidence and methodology has been tested and (2) the rate of error is acceptable as a matter of record. For the reasons stated above, we find that the trial court did not abuse its discretion. Defendant is not entitled to relief on this issue.

## **V. LIMITATION OF PROOF**

Defendant contends that the trial court erred when it limited Defendant's proof at trial regarding the arresting officer's motive. Defendant argues that this limitation deprived Defendant of his right to due process and a fair trial. We disagree.

Specifically, Defendant sought to question Officer Breedlove about his motive for Defendant's arrest. It was Defendant's contention that Officer Breedlove did not arrest Defendant because he was driving while intoxicated, but because the officer wanted to seize Defendant's expensive new truck. Defendant maintained that the other driver escaped arrest because he was driving an older model. The trial court sustained the State's objection to defense counsel's line of questioning concerning motive, then informed counsel during a sidebar conference that, if he were to persist, it would open the door for the State to introduce evidence of Defendant's prior DUI conviction. Based on this ruling, defense counsel abandoned the discussion of the officer's motive.

The motive of an arresting officer is not relevant where the officer can show that sufficient probable cause existed to believe that a crime had been committed. Put another way, the underlying intent or motivation of officers involved in an arrest or seizure is immaterial where the activity undertaken is precisely the same as would have occurred had the intent or motivation been entirely absent from the case. See Abel v. United States, 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960); State v. Vineyard, 958 S.W.2d 730, 736 (Tenn. 1997) (probable cause justifies a traffic stop under Article I, Section 7 of the Tennessee Constitution without regard to the subjective motivations of police officers).

Officer Breedlove's alleged subjective intent concerning Defendant's vehicle is not relevant if Breedlove had sufficient probable cause to stop Defendant. Clearly, Breedlove had the requisite probable cause when he observed Defendant and his friend driving at twenty miles per hour over the posted speed limit. Moreover, Defendant gave Breedlove probable cause for arresting him when he failed the field sobriety tests and presented the appearance of a man who was intoxicated. Thus, Defendant's argument that the trial court erred when it limited Defendant's proof at trial regarding the Officer Breedlove's motive for Defendant's arrest and subsequent seizure of his vehicle is without merit. Defendant is not entitled to relief on this issue.

## **VI. CONCLUSION**

For the forgoing reasons, we affirm the judgment of the trial court.

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THOMAS T. WOODALL, JUDGE